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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 09, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

HUBERT GILMORE, an individual,

No. 4:25-CV-05011-MKD

Plaintiff,

ORDER GRANTING
DEFENDANT'S MOTION FOR
PARTIAL JUDGMENT ON THE
PLEADINGS

vs.

BENTON COUNTY, a Washington
political entity,

ECF No. 14

Defendant.

Before the Court is Defendant's 12(c) Motion for Partial Judgment on the

Pleadings, which seeks judgment on Plaintiff's race claim under Washington's

Law Against Discrimination ("WLAD"). ECF No. 14. The Court has reviewed

the motion and record and is fully informed. For the reasons explained below, the

Court grants the motion and grants Plaintiff leave to file a First Amended

Complaint.

LEGAL STANDARD

"After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). The standard

ORDER - 1

1 governing a Rule 12(c) motion for judgment on the pleadings is “functionally
2 identical” to that governing a Rule 12(b)(6) motion to dismiss. *United States ex*
3 *rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 n.4 (9th Cir.
4 2011) (citations omitted). “A judgment on the pleadings is properly granted when,
5 taking all the allegations in the non-moving party’s pleadings as true, the moving
6 party is entitled to judgment as a matter of law.” *United States v. Teng Jiao Zhou*,
7 815 F.3d 639, 642 (9th Cir. 2016) (quoting *Fajardo v. Cnty. of Los Angeles*, 179
8 F.3d 698, 699 (9th Cir. 1999)).

9 **DISCUSSION**

10 Defendant moves under Fed. R. Civ. P. 12(c), seeking dismissal of
11 Plaintiff’s race claim under the WLAD. ECF No. 14 at 2. Plaintiff, in turn, argues
12 that if his race claim under WLAD is dismissed that this dismissal should be
13 without prejudice with leave to file a motion to amend the Complaint prior to the
14 deadline in the Court’s Jury Trial Scheduling Order. ECF No. 15 at 4.

15 **A. WLAD**

16 Under WLAD, an employee may establish a prima facie case of disparate
17 treatment through the *McDonnell Douglas* burden-shifting test or direct evidence.
18 *Williams v. Bose Corp.*, No. 65713-5-I, 2011 WL 5867053, at *6 (Wash. Ct. App.
19 Nov. 21, 2011). Under the *McDonnell Douglas* burden-shifting test, a plaintiff
20 must show he: “(1) belongs to a protected class; (2) was treated less favorably in

1 the terms or conditions of his employment than a similarly situated, nonprotected
2 employee, and (3) the nonprotected ‘comparator’ was doing substantially the same
3 work.” *Id.* (citing *Domingo v. Boeing Employees’ Credit Union*, 98 P.3d 1222,
4 1227 (Wash. Ct. App. 2004)). Under the direct evidence approach, the employee
5 must provide direct evidence that the defendant “acted with a discriminatory
6 motive and that the discriminatory motivation was a ‘significant or substantial
7 factor in an employment decision.’” *Id.* (quoting *Kastanis v. Educ. Emps. Credit
Union*, 859 P.2d 26, 30 (Wash. 1993)).

9 Defendant asserts that Plaintiff fails to allege a prima facie race claim under
10 WLAD. ECF No. 14 at 3. Specifically, Defendant asserts that Plaintiff’s
11 Complaint does not contain any factual statements “that he is in a protected status
12 as to race, how he was discriminated against based on race, that others outside his
13 protected status were treated more favorably, or any other facts supporting the
14 allegation that his race was a substantial factor in [Defendant’s] decision to take
15 adverse action against him.” *Id.* at 3-4.

16 Defendant is correct. The Complaint does not allege sufficient facts in
17 support of a prima facie race claim under WLAD. Rather, the Complaint contains
18 only two mentions of race: (1) “WLAD prohibits employers from discriminating
19 against employees on the basis of race or the presence of any physical disability;”
20 and (2) “Defendant discriminated against [Plaintiff] on the basis of race and

1 physical disability.” ECF No. 1-1 at 5, 6 ¶¶ 40, 44. Even taking these two
2 allegations as true, Plaintiff has not alleged a prima facie race claim under WLAD.
3 Thus, Defendant is entitled to judgment as a matter of law on the race claim under
4 the WLAD.

5 **B. Leave to Amend**

6 “[A]lthough Rule 12(c) does not mention leave to amend, courts have
7 discretion both to grant a Rule 12(c) motion with leave to amend . . . and to simply
8 grant dismissal of the action instead of entry of judgment.” *Lonberg v. City of*
9 *Riverside*, 300 F. Supp. 2d 942, 945 (C.D. Cal. 2004) (citations omitted).

10 Plaintiff argues that he should be granted leave to amend up until the
11 November 3, 2025, deadline in the Court’s Jury Trial Scheduling Order. ECF No.
12 15 at 4; *see also* ECF No. 13 at 17. Defendant, in turn, argues that the Court
13 should not allow Plaintiff until November 3, 2025, to amend. ECF No. 16 at 2-4.

14 Defendant has not established that it will be unduly prejudiced by the Court
15 granting Plaintiff’s request for a leave to amend. Defendant only objects to the
16 potential delay, which alone is not grounds to deny leave to amend. *See United*
17 *States v. Webb*, 655 F.2d 977, 980 (9th Cir. 1981) (citing *Howey v. United States*,
18 481 F.2d 1187, 1191 (9th Cir. 1973)) (“[D]elay alone no matter how lengthy is an
19 insufficient ground for denial of leave to amend.”). Therefore, the Court grants

1 Plaintiff leave to amend his pleadings, but will require Plaintiff to amend his
2 Complained within 90 days from the issuance of this Order.

3 **CONCLUSION**

4 For the reasons stated above, the Court grants 12(c) Motion for Partial
5 Judgment on the Pleadings. Plaintiffs shall file the First Amended Complaint on or
6 before August 7, 2025, addressing his race claim under WLAD.

7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. Defendant's 12(c) Motion for Partial Judgment on the Pleadings, ECF
9 **No. 14, is GRANTED.**

10 2. Plaintiff shall file a First Amended Complaint on or before **August 7,**
11 **2025.** Leave to amend is limited to the race claim under WLAD; Plaintiff may not
12 add additional claims, parties, or requests for relief without separate leave of the
13 Court.

14 **IT IS SO ORDERED.** The District Court Executive is directed to file this
15 order and provide copies to the parties.

16 DATED May 9, 2025.

17 *s/Mary K. Dimke*
18 MARY K. DIMKE
19 UNITED STATES DISTRICT JUDGE
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